

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: WM- 12 - 15

Relating to: The 2015 Bureau of Wildlife Management housekeeping rule amending Ch.'s NR 10, 12, 15 and 19 Wis. Admin. Code

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

These will be permanent rules only.

2. Detailed description of the objective of the proposed rule:

These rule changes are proposed to update administrative code language to correct inconsistencies, update outdated language, revise scientific and common name spellings, and provide clarification when appropriate. This rule package will amend regulations for hunting, trapping, possession of animals killed in motor vehicle accidents, gathering wild rice, invasive species, and wildlife refuges found in Ch's. NR 10, 12, 15, 19, and 40.

Specifically, these rules would:

1. These rules would modify a number of definitions in Ch. NR 10 to eliminate unneeded language and for clarification. Additionally, a trap-type definition would be modernized to accommodate polymer trap materials. Currently, only steel-jawed traps are allowed. Current definitions reference “drowning” types of trap sets and that language would be changed to “submersion” to more accurately reflect how that type of trap set functions. Finally, a definition for the word culvert, which is used commonly throughout the chapter, would be created.
2. This rule proposal will add clarifying language. For instance, porcupines are currently an unprotected species. Porcupines would be added to an existing list of unprotected species so that provision of administrative code is more informative.
3. These rules would clarify that, when it is illegal to hunt over bait under current rules and laws, it is also illegal to hunt over bait which is placed for trapping purposes. This proposal would not change any currently allowed use of bait for trapping.
4. Increase the allowable number applicants in a group for turkey hunting permits so that more than four people may apply together. These rules would also allow the use of electronic calls by turkey hunters who are deaf.
5. Clarify that all for-fee hunting is illegal related to department issued shooting permits.

6. Simplify the process for taking possession of car killed deer, turkey, and bear. This is particularly important related to deer because the department will no longer be registering deer in person at local registration stations.
7. Fix scientific and common names and permanently add bracketed counties that were inadvertently omitted from the list of restricted counties in the department's Invasive Species Rule. The common name of *Amyntas* species should be changed from crazy worm to jumping worm to reflect current naming convention and to avoid using a potentially offensive name. The scientific name spelling of Woodland forget-me-not should be changed from *Myosotis sylvaticum* to the accepted and valid scientific name *Myosotis sylvatica*. Three invasive species (Poison hemlock, Wild chervil, and European marsh thistle) have bracketed counties that should be permanently added to the list of restricted counties per their prohibited county lists.
8. Clarify that the use of archery equipment such as lighted, reflective, or glowing nocks is not a violation of current rules that prohibit tagging or marking live wild animals.
9. Eliminate a game refuge at Columbia Co Indian Agency House. These are not department owned lands and there is no purpose for this refuge to be established by the department.
10. Remove Lake Noquebay in Marinette County from the list regulated wild rice waters because, unlike all other regulated waters, this lake is not located in the ceded territories.
11. The department has recently completed an extensive rulemaking process related to deer hunting and management. If the department identifies remedial or non-controversial revisions which are necessary to implement the deer season or manage deer, those may also be topics of this rule making process.
12. These rule may make additional updates such as correcting cross-reference citations, updating road names on maps, changes needed in order to update application forms, or revisions which are necessary for consistency with recently enacted legislation.
13. The department may include other, minor, non-controversial rule proposals including ones which have passed at the annual Spring Fish & Wildlife Hearings as advisory questions by the Conservation Congress.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

All of the policies in this rule are generally consistent with past board policies of regulating fish and game harvest and invasive species for conservation purposes and establishing closed areas for hunting.

Recent trap designs include ones with jaws constructed of polymers and these new trap types have passed humane trap standard evaluations. As polymer trap designs become available, this proposed rule would allow their legal use. The change to a more realistic description of "foothold" instead of "steel jaw" would also better describe how the devices are designed to work, by just holding the animal.

By applying as a group, turkey permit applicants can assure that all members of a hunting party will draw tags that are for the same time period and hunting zone. Currently, a maximum of four hunters are

allowed to submit a group application for the spring and fall wild turkey hunting seasons. This proposal would increase the limit on the number of participants in the group to ten hunters. This would reduce the number of complaints received by department staff that the current group application cap does not allow all members of an intended hunting party to apply together as a group.

These rules would clarify that, when it is illegal to hunt over bait under current rules and laws, it is also illegal to hunt over bait which is placed for trapping purposes. This proposal would not change any currently allowed use of bait for trapping and would not modify what are considered to be normal hunting practices. This is intended to eliminate what some people perceive is a loophole in the current prohibitions of the use of bait for hunting.

The use of electronic calls is currently illegal for turkey hunting. There is an exception which allows the use of electronic calls by people who possess permits for hunters with mobility-related disabilities. These rules would expand the exception so that electronic calls could also be used by people who are deaf.

Under current rules, it is illegal for the holder of agricultural damage shooting permit tags to charge any type of fee of people who receive the tags. The Department has learned of individuals, other than the permittee, charging fees for guiding services on agriculture damage permits or selling agriculture damage tags to other participants. This proposal would clarify that it is illegal for anyone to charge a fee for hunting in agricultural damage shooting permit situations.

Under 2011 Act 251 ss. 4, 10 to 15., changes were made to the car-killed deer statute to include bear and turkeys. In the future, the department may also change to tags or permits that can be printed from law enforcement vehicle computers but those tags may not be durable enough if they must be attached to the carcass. These changes will make administrative rules consistent with changes made by Act 251 and provide more efficient issuance of tags or permits in the field. This proposal may also save on the cost of printing special durable, three-ply carcass tags that have to be distributed statewide to all law enforcement agencies and to more efficiently make future modifications to permits.

The National Society for the Colonial Dames of America in the State of Wisconsin owns a small property in Columbia County which is called the Old Indian Agency House. It is designated as a game refuge under department rules and the owners have requested that the property be undesignated. The initial purpose for a number of the refuges established in this Ch. NR 15 is unknown. The only practical benefit to a refuge owner may be that department law enforcement staff could take enforcement action against someone who is hunting on the property. However, where these properties are privately owned, enforcement of trespassing laws by local police may be a more practical way to prevent hunting if the owner does not allow it.

Current rules establish a number of date-regulated lakes in northern Wisconsin which have been jointly agreed upon by the Department and the Great Lakes Indian Fish and Wildlife Commission. On these lakes, state officials inspect the rice crop, post signs at access points, and coordinate public notice of when the rice crop may be harvested. All of these lakes, except Noquebay Lake in Marinette County, are within the ceded territory of Northern Wisconsin. Allowing rice harvest on Noquebay Lake does not require approval or consultation with the Voigt Task Force, or the Ojibwe tribes because this is outside of the ceded territory. This proposal would eliminate date-regulation authority on this body of water so that the department does not need to inspect the rice for ripeness or publicize when harvest is allowed.

The proposed rule edits to the invasive species list make minor name fixes and correct county listing inconsistencies which were identified late in the department's recent extensive rulemaking process, which became effective May 1, 2015.

Finally, the department has recently completed an extensive rulemaking process related to deer hunting and management and will be implementing new regulations in the fall season, 2015. If the department

identifies remedial or non-controversial revisions which are necessary to implement the deer season or manage deer, those may also be topics of this rule making process.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The chapter on wild animals and plants, in s. 29.014, “rule making for this chapter”, establishes that the department shall maintain open and closed seasons for fish and game and any limits, rest days, and conditions for taking fish and game. This grant of rule-making authority allows the department to make changes related to trapping regulations and turkey hunting regulations or permit applications. This grant of rule-making authority also allows rulemaking which establishes the disposition of wild animals killed in vehicle accidents with additional direction provided in s. 29.349 related to animals killed by motor vehicles.

Additional statutory authority relating to the issuance of turkey hunting permits is found in s. 29.164 which establishes that the department may regulate and limit the hunting of wild turkeys by issuing licenses.

The wildlife damage abatement and claims program is established in s. 29.889 and rule making is specifically authorized under subsection paragraph (2) (b) which directs the department to establish rules for eligibility under the program.

The department’s authority to promulgate wild rice is established in s. 29.607 related to wild rice. This statute establishes department powers and requires that the department obtain the advice and consent of the tribal council before promulgating any rules governing the harvest, use and disposition of wild rice growing within the bounds of an Indian reservation.

The establishment of game refuges is authorized in s. 23.09 (2) (b) relating to the department’s ability to designate locations reasonably necessary for the purpose of providing safe retreats in which birds may rest and replenish adjacent hunting grounds.

The department’s authority to classify and regulate invasive species is established s. 23.22 and rule making is specifically authorized under subsection paragraphs (2) (a) and (b), which directs the department to establish rules to identify, classify, and control invasive species.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

Approximately 40 hours will be needed by the department prior to and following the hearings.

6. List with description of all entities that may be affected by the proposed rule:

Hunters, trappers, recreational users of DNR lands, and motorists who are involved in collisions with wild animals are the principal groups that will be affected by this rulemaking. Any impacts will be very minor and no controversy is anticipated.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

These rules, and the legislation which grants the department rule making authority, will have no effect on the private sector or small businesses. These rules are applicable to individual sportspersons, rice gatherers, or motorists who are involved in collisions with wild animals and impose no compliance or reporting requirements for small business.

The proposed rule changes are not expected to significantly influence the spending activities or hunting and trapping activity of hunters, trappers, other outdoor enthusiasts, or motorists. Correspondingly, no related economic impacts are anticipated.

Contact Person: Scott Loomans, Wildlife Regulation Policy Specialist, 608-267-2452
scott.loomans@wisconsin.gov